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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,880	07/03/2001	Thomas James Klofta	8622	2203

27752 7590 04/10/2002

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/10/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/898,880

Applicant(s)

KLOFTA ET AL.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1616

### DETAILED ACTION

Claims 1-20 are pending in this application.

1. The papers filed on March 12, 20002 (certificate of mailing dated March 6, 2002) have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process. The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

### COPY OF PAPERS ORIGINALLY FILED

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If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office if Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.* the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.

### ***Election/Restrictions***

2. Applicant's election with traverse of Group III in Paper No. 6 is acknowledged.

The traversal is on the ground(s) that there is no serious burden on examiner. This is

Art Unit: 1616

not found persuasive because Group I is drawn to a composition only, Group II is drawn to an article (see claim 11) and Group III is drawn to a specific type of article.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,609,587) in view of Wenninger et al. (*Int. Cos. Incred. Dict. and Hand. 1997*).

Roe discloses a diaper having a lotioned topsheet comprising a liquid polyol polyester emollient and an immobilizing agent. The disposable absorbent article of the prior art can be sanitary napkins, panty-liners, diapers, incontinence briefs, etc. (col. 4, lines 34-37). The lotion composition comprises (1) a liquid polyol polyester emollient; (2) an immobilizing agent(s) for the liquid polyol polyester emollient; (3) optionally a hydrophilic surfactant; and (4) other optional components (col. 10, lines 38-42). The skin-conditioning agent of the claimed invention is the polyol polyester of the prior art (col. 10, lines 56-67 to col. 15, lines 1-20). The viscosity agent of the claimed invention is the immobilizing agent (i.e. C<sub>12</sub>-C<sub>22</sub> fatty acids) (col. 18, lines 45-62) or waxes (col. 21, lines 18-25). Within the optional components we find vitamins, skin soothing agents (i.e. applicants claimed skin care ingredients) and film-forming agents (col. 23, lines 27-44). The prior art does not teach the specific film-forming agents as claimed.

Art Unit: 1616

Wenninger discloses in Volume 1 pages 26-27 the use of acrylates copolymers as film formers. It is also taught in volume 2, pages 1067-1068 the use of polyethylene as a film-forming agent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the acrylates copolymers and polyethylene of Wenninger in the invention of Roe. Column 23, lines 41-44, state "all of these materials are well known in the art as additives for such formulations and can be employed in appropriate amounts in the lotion compositions of the present invention." Thus it is obvious to combine.

#### ***Conclusion***

4. Claim 20 stands rejected. Claims 1-19 are withdrawn from consideration as non-elected claims.

#### ***Telephone Inquiries***

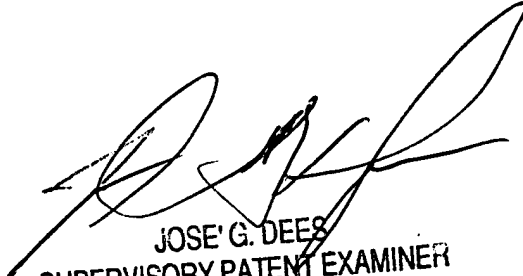
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1616